IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1970

No. 5175

ADOLFO PEREZ, ET UX.,

Petitioners,

vs.

DAVID H. CAMPBELL, SUPERINTENDENT,
MOTOR VEHICLE DIVISION, ARIZONA
HIGHWAY DEPARTMENT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF

GARY K. NELSON
The Attorney General
ROBERT H. SCHLOSSER
Special Counsel
718 Arizona Title Building
Phoenix, Arizona 85003

Counsel for Respondents

INDEX

TABLE OF AUTHORITIES

Cases:

Arizona Revised Statutes (A.R.S.)

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1970

No. 5175

ADOLFO PEREZ, ET UX.,

Petitioners,

vs.

DAVID H. CAMPBELL, SUPERINTENDENT,
MOTOR VEHICLE DIVISION, ARIZONA
HIGHWAY DEPARTMENT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF

OPINION BELOW

Respondents adopt Petitioners' statement concerning the identity of the Opinion Below.

JURISDICTION

Respondents adopt Petitioners' Statement of Jurisdiction.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondents adopt Petitioners' statement of the Constitutional Provisions and Statutes Involved except add thereto the following:

Arizona Revised Statutes Sec. 28-1161(A):

> "A. When a person fails within sixty days to satisfy a judgment, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which the judgment is rendered within this state, to forward to the superintendent immediately after the expiration of such sixty days, a certified copy of the judgment."

Arizona Revised Statutes Sec. 28-1163:

> "A. The license, registration and nonresident operating privilege shall remain suspended and shall not be renewed, nor shall any license or registration be thereafter issued in the name of the person, including any person not previously licensed, unless and until every such judgment

is satisfied in full or to the extent provided by this article, and until the person gives proof of financial responsibility subject to the exemptions stated in Sec. 28-1162 and 28-1165.

B. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article."

Arizona Revised Statutes Sec. 28-1164:

"A. Judgments referred to in this article shall, for the purpose of this chapter only, be deemed satisfied upon compliance with one of the following:

1. When ten thousand dollars has been credited upon a judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident.

2. When, subject to the limit of ten thousand dollars because of bodily injury or death of one person, the sum of twenty thousand dollars has been credited upon a judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident.

3. When five thousand dollars has been credited upon a judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

B. Payments made in settlements of claims

because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section."

Arizona Revised Statutes Sec. 28-1165:

"A. A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

B. The superintendent shall not suspend a license, registration or nonresident operating privilege, and shall restore any license, registration or nonresident operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments, and while the payment of any installment is not in default.

C. In the event the judgment debtor fails to pay an installment as specified by the order, then upon notice of the default, the superintendent shall forthwith suspend the license, registration or nonresident operating privilege of the judgment debtor until the judgment is satisfied, as provided in this chapter."

QUESTION PRESENTED FOR REVIEW

Is the Arizona Statute, A.R.S. Sec. 28-1163(B) unconstitutional as violative of the Supremacy Clause?

STATEMENT OF THE CASE

Respondents adopt Petitioners' Statement of the Case with the exception that Respondents object to the characterization of the judgment (as found in paragraph one of Petitioners' Statement of the Case) as a judgment versus the marital community, and state that the judgment was against Adolfo Perez and Emma Perez.

ARGUMENT

I

THE ARIZONA STATUTE, WHICH PETITIONERS CHALLENGE AS VIOLATIVE OF THE UNITED STATES CONSTITUTION'S SUPREMACY CLAUSE, IS NOT UNCONSTITUTIONAL IN ITS APPLICATION TO EITHER OF THE PETITIONERS HEREIN.

Petitioners allege that the various states may not legislate contrary to the Bankruptcy Act. In support thereof, they cite International Shoe Co. vs. Pinkus, 278 U.S. 261, 265, 73 L.Ed. 318, 320, 49 S.Ct. 108, 13 Am. Bankr. R. (n.s.) 108 (1929), which is not relevant to the issues here. The Pinkus case merely held that Arkansas' Insolvency Statute, a local version of bankruptcy, was in direct conflict and competition with the Federal Act. That case dealt with a substantially different statute from the statute[1] under attack in

[1] A.R.S. Sec. 28-1163(B)

the instant case. The statute attacked herein is not in conflict with the Bankruptcy Act, but in fact recognizes the Act's existence, jurisdiction and powers, and merely clarifies that the state's valid police power will not be dissolved or thwarted solely because the invoking device (an unsatisfied tort-motor vehicle judgment) is also the source of a creditor's claim, the latter being dischargeable by the Bankruptcy Act.

Just as Congress has provided that certain debts may not be discharged in bankruptcy[2], the courts have recognized that merely because a state law may affect a debtor-creditor relationship does not necessarily mean that such law conflicts with the Bankruptcy Act. In Kesler vs. Department of Public Safety, 369 U.S. 153, 82 S.Ct. 807, 7 L.Ed.2d 641 (1962), this Court stated:

> "Section 17 of the Bankruptcy Act, 11 U.S.C. Sec. 35, provides that 'A discharge in bankruptcy shall release a bankrupt from all of his provable debts,' with exceptions not here material. See also 11 U.S.C. Sec. 1 (15). A discharge relieves the bankrupt 'from legal liability to pay a debt that was provable,' Zavelo v. Reeves, 227 U.S. 625, 629 (1913); it is a valid defense in an action brought in a State court to recover the debt. A State cannot deal with the debtor-creditor relationship as such and circumvent the aim of the Bankruptcy Act in lifting the burden of debt from a worthy debtor and affording him a new start. The limitations imposed upon the states by the Act raise constitutional questions under the Supremacy Clause,

[2] Section 17 of the Bankruptcy Act, 11 U.S.C. Sec. 35.

Art. VI. Thus, a discharge does not free the bankrupt from all traces of the debt, as though it had never been incurred. This Court has held that a moral obligation to pay the debt survives discharge and is sufficient to permit a State to grant recovery to the creditor on the basis of a promise subsequent to discharge, even though the promise is not supported by new consideration. Zavelo v. Reeves, supra. The theory, the Court declared, is that 'the discharge destroys the remedy but not the indebtedness,' 227 U.S., at 629. And in Spalding v. New York ex rel. Backus, 4 How. 21 (1846), under an earlier bankruptcy law, the Court held that a discharge did not prevent the State from collecting a fine for contempt in violation of an injunction issued to aid in the execution of a judgment debt, although the fine was turned over to the creditor. States are not free to impose whatever sanctions they wish, other than an action of debt or assumpsit, to enforce collection of a discharged debt. But the lesson Zavelo and Spalding teach is that the Bankruptcy Act does not forbid a State to attach any consequence whatsoever to a debt which has been discharged." 369 U.S. at 169, 170 and 171.

In Kesler, supra, this Court best explained the valid public purpose of Utah's statute which is substantially similar to the one under attack in the instant case.

"The problem of highway safety has concerned legislatures since the early years of the century. Utah, like other States, has responded to this problem by requiring the registration and inspection of vehicles in prescribing certain necessary equipment; by

requiring examination and licensing of operators and excluding unqualified persons from driving; by providing comprehensive regulations of speed and other traffic conditions; and by authorizing extra-territorial service of process on nonresident motorists involved in accidents within the State. And, like every other State, Utah has responded by enacting a financial-responsibility law.

Financial-responsibility laws are intended to discourage careless driving or to mitigate its consequences by requiring as a condition of licensing or registration the satisfaction of outstanding accident judgments, the posting of security to cover possible liability for a past accident, or the filing of an insurance policy or other proof of ability to respond in damages in the future. By 1915 a San Francisco ordinance required a bond or liability insurance for all buses; a number of other cities and States early enacted similar provisions. In 1925 Massachusetts forbade the registration of any motor vehicle without proof of adequate liability insurance or other evidence of ability to satisfy a judgment. Mass. Laws 1925, c. 346. That same year the Commissioners on Uniform Laws appointed a committee to consider a uniform compulsory insurance law. Handbook of the National Conference on Uniform State Laws. (1932), p. 261." 369 U.S. at 158 and 159.

In upholding the public purpose of the police power exercised through financial responsibility laws, Justice Frankfurter said:

". . . A State may property decide as forty-five have done, that the prospect of a judgment that must be paid in order to regain driving privileges

servies as a substantial deterrent to unsafe driving. We held in Reitz that it might impose this requirement despite a discharge, in order not to exempt some drivers from appropriate protection of public safety by easy refuge in bankruptcy. To make suspension of privileges dependent upon the creditor's request, as twenty-one have done, and as Congress has done for the District of Columbia, is nothing more than to make explicit what happens in the real world regardless of the statutory language. Even if the creditor-request provision makes suspension more likely, we see no reason why a State may not so provide in order that the deterrent be made more effective by authorizing the party most likely to be interested in the enforcement of the sanction to set it in motion. Nor do we think in excess of their power the action of thirty-five States that have attempted, as Congress has done, to authorize the creditor to lift and restore the suspension, or the forty-three that again as Congress, have provided that in the absence of creditor consent the suspension shall last forever unless the judgment is extinguished. To whatever extent these provisions make it more probable that the debt will be paid despite the discharge, each no less reflects the State's important deterrent interest. Congress had no thought of amending the Bankruptcy Act when it adopted this law for the District of Columbia; we do not believe Utah's identical statute conflicts with it either.

Utah is not using its police power as a devious collecting agency under the pressure of organized creditors. Victims of careless car drivers are a wholly diffused group of shifting

and uncertain composition, not even remotely united by a common financial interest. The Safety Responsibility Act is not an Act for the Relief of Mulcted Creditors. It is not directed to bankrupts as such. Though in a particular case a discharged bankrupt who wants to have his rightfully suspended license and registration restored may have to pay the amount of a discharged debt, or part of it, the bearing of the statute on the purposes served by bankruptcy legislation is essentially tangential." 369 U.S. at 173 - 174.

It should be noted in the foregoing quote that one of the primary areas of attack against the Utah statute was that the creditor had discretion to invoke governmental suspension powers. This discretion does not exist in Arizona since A.R.S. Sec. 28-1161(A) imposes notification as a mandatory duty irrespective of action on behalf of the judgment-creditor.

It is also interesting to note that, contrary to Petitioners' contention, Arizona does not require satisfaction of the judgment as a precondition to possessing a valid license or registration. In this regard A.R.S. Sec. 28-1165 provides a reasonable means of alleviating such suspension. The Court should note also that, as substantiated in the Appendix filed herein which contains in totality the record below, Petitioners have failed to afford themselves the opportunity to seek relief under A.R.S. Sec. 28-1165.

Petitioners have admitted throughout this proceeding that a state could validly require liability insurance as a prerequisite to the original issue of a

motor vehicle operator's license. Decisions supporting such a rule are Packard vs. Banton, 264 U.S. 140, 44 S.Ct. 257, 68 L.Ed. 596 (1924); Sprout vs. City of South Bend, 277 U.S. 163, 48 S.Ct. 502, 72 L.Ed. 833, 62 A.L.R. 45 (1928); Escobedo vs. State Department of Motor Vehicles, 222 P.2d 1, 35 Cal.2d 870 (1950); and Farmer vs. Killingsworth, 102 Ariz. 44, 424 P.2d 172 (1967). Petitioners readopt this position in their Brief filed with this Court.[3] Since the inception of this action, Respondents have been baffled as to how the Petitioners can rationally admit this and yet maintain that the less restrictive procedure challenged in the instant case is unconstitutional.

Petitioners contend that the valid public purpose upheld in Kesler is not applicable to the Arizona statute because in Schecter vs. Killingsworth, 380 P.2d 136, 93 Ariz. 273 (1963), the Arizona court did not utilize the deterrent factor as a basis of validity to the challenged statute. Such statement is misleading for the Arizona Supreme Court said:

> "The Financial Responsibility Act has for its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons. It accomplishes the objective by requiring proof of financial responsibility by those involved in an accident, either by a showing of insurance which covers the accident, or by requiring a bond or deposit of cash or securities. It may, as incidental purposes and effects, because of the threat of

[3] See footnote 6 at page 8 of PETITIONERS' BRIEF.

loss of driving rights following an uninsured accident, (1) encourage operators of motor vehicles to obtain liability insurance, and (2) encourage drivers to drive more carefully. Because the uninsured motorist can avoid the adverse effects of the statute without obtaining insurance, and without improving his driving practices (i.e. by putting up security -- here $425.00 -- or by obtaining a release from the injured party, or an agreement for payment of damages in installments) we cannot consider either the encouragement to obtain insurance or the improvement of safety conditions on the highway to be primary objectives of this law.

It is well recognized that the social objective of preventing financial hardship and possible reliance upon the welfare agencies of the state is a permissible goal of police power action. Home Accident Ins. Co. v. Industrial Commission, 34 Ariz. 201, 269 P. 501 (1928); Berberian v. Lussier, supra; Hadden v. Aitken, supra; Rosenblum v. Griffin, supra." (Emphasis added) 93 Ariz. at 280 and 281.

In accordance with the views expressed in Arizona are the cases cited in their opinion. Furthermore, in the case of Reitz vs. Mealey, 314 U.S. 33, 62 S.Ct. 24, 86 L.Ed. 21 (1941), this very Court recognized that such statutes may serve a valid purpose for reasons other than merely deterrent effects.

". . . The use of the public highways by motor vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent. The universal practice

is to register ownership of automobiles and to license their drivers. Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process. . . ." (Emphasis added) 314 U.S. at 26.

Also see Rosenblum vs. Griffin, 197 A. 701, 89 N.H. 314 (1938).

Kesler also reindorses Respondents' argument that this Court has recognized more than the deterrent effect as a valid public purpose for such legislation.

". . . We held in Reitz that it might impose this requirement despite a discharge, in order not to exempt some drivers from appropriate protection of public safety by easy refuge in bankruptcy. . . ." 369 U.S. at 173.

The policies motivating the police powers as set out in Kesler, Reitz and Schecter are all within the purview of a valid, reasonable State purpose.

Petitioners state that enforcement of the statute challenged herein does not really accomplish the purpose which was intended. Such argument is mere speculation and improper to submit for this Court's consideration. In the case of Bibb vs. Navajo Freight Lines, 359 U.S. 520, 79 S.Ct. 962, 3 L.Ed.2d 1003 (1959), this Court, in discussing the constitutionality of a highway safety statute, stated:

"These safety measures carry a strong presumption of validity when challenged in court. If there are alternative ways of solving a problem,

> we do not sit to determine which of them is best suited to achieve a valid state objective. Policy decisions are for the state legislature, absent federal entry into the field. Unless we can conclude on the whole record that 'the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it' (Southern Pacific Company v. State of Arizona, supra, 325 U.S. at pages 775-776, 65 S.Ct. at page 1523) we must uphold the statute." 359 U.S. at 524.

It is respectfully submitted that this Court's function is to judge the constitutionality, not the wisdom, of the challenged legislation.

ARGUMENT

II

PETITIONER, EMMA PEREZ'S CONTENTIONS, AS THEY SEPARATELY APPLY TO HER DO NOT MAKE THE CHALLENGED STATUTE UNCONSTITUTIONAL IN ITS APPLICATION TO HER.

Petitioner, Emma Perez, contends in the alternative that even if the challenged statutes are not unconstitutional in their application to her husband, Adolfo Perez, they are unconstitutional in their application to her.

Respondents, first wish to make the record quite clear as to two points which appear to have misled the Ninth Circuit Court of Appeals. First, it is true that

Emma Perez was not in the vehicle with her husband Adolfo Perez at the time of the accident which eventually led to the suspension challenged herein; however, this by no means forecloses the possibility that Emma Perez was a party-defendant because of either misfeasance or nonfeasance on her own part.[4] Secondly, the Opinion as rendered by the Ninth Circuit Court of Appeals,[5] at least implies that Emma Perez was an indispensable party-defendant to the judgment under Arizona Law. This simply is not true and Petitioners admit this at pages 11 and 12 of their Brief wherein they state that Emma Perez "... was a proper nominal defendant and judgment debtor in the law suit. . . ."

Petitioner, Emma Perez, contends that she is not financially irresponsible. On this point the record speaks for itself. Financial irresponsibility is well illustrated by the fact that she did not possess an automobile liability insurance policy nor has she on this date qualified under any of the exemptions available (A.R.S. Sec. 28-1162 - 1165) to remove a judgment debtor from the "financially irresponsible" classification.

As previously stated, there is nothing in the record to foreclose the possibility that the nexus of the judgment against Emma Perez has its basis upon her own misfeasance or nonfeasance. Therefore, by confessing judgment (see page 3 of Appendix filed herein), especially since she was not an indispensable party to that action, she has waived any right she may have had to contend

---

[4] A.R.S. Sec. 28-1102, subdivision 2, applies the suspension to a judgment arising out of ownership, maintenance or use.

[5] Perez vs. Campbell, 421 F.2d 619 (1970).

that her sole connection with this judgment is based upon the fact that she is the wife of Adolfo Perez. Upon the record before this Court, it is impossible to arrive at the factual conclusion for which she contends.

Assuming arguendo that Mrs. Perez is correct in her factual contention, this still does not make the challenged legislation unconstitutional in its application to her. Emma Perez claims that, because of the husband's managerial capacity concerning personal property under Arizona community property law, she could not obtain insurance with community funds. This results in the conclusion that if Emma Perez chooses to act independently of the co-petitioner, she can use only her separate funds to purchase insurance or relieve herself from the judgment. Once again, assuming this to be the case, does the allegation that she may have insufficient separate property to satisfy such an obligation or to make such insurance purchase render the statute unconstitutional in its application to her? Certainly not. As illustrated in Escobedo vs. State Department of Motor Vehicles, supra, the wealth or poverty of the judgment debtor does not affect the constitutionality of the statutes involved.

Petitioner, Emma Perez, asserts there is no valid State interest in levying the applicable sanctions against her. As stated in earlier portions of this Brief, a valid and primary purpose of the challenged statutes is to encourage payment to those persons suffering injury so as to lessen the possibility of having them placed on the welfare rolls. Since one of the purposes is to provide a stronger likelihood of such payment, all persons civilly responsible for such damages, should be subject to the sanctions imposed by these statutes.

Emma Perez contends that the application of the

challenged statutes to her is in fact punitive. Such a contention is not unique and rulings to the contrary have been rendered on numerous occasions.[6]

The Ninth Circuit Court of Appeals, due to its erroneous conclusions as to facts and applications of law, assumed that the validity of the suspension applied to Emma Perez must be adjudged because of her ownership of the Perez vehicle which was involved in the accident. Assuming that this Court arrives at the same conclusion, such a suspension based on ownership is no less unconstitutional in light of the valid police power purpose to be achieved. See Perez vs. Campbell, n.5.

CONCLUSION

Respondents urge this Court not to be overwhelmed with sympathy for Petitioners' alleged plight. It is important to remember that Petitioners have never sought relief under A.R.S. Sec. 28-1165 and it is also important to mention that their Brief contains not one reference to the suffering, economic and otherwise, of those persons whose injury gave rise to Petitioners' suspension. Respondents further urge this Court to consider that Petitioners admit "compulsory insurance"

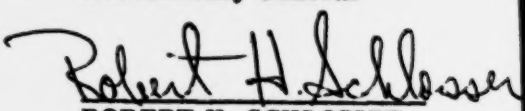
---

[6] Packard vs. Banton, 264 U.S. 140, 44 S.Ct. 257, 68 L.Ed. 596 (1924); Parker vs. State Highway Department, 24 S.C. 263, 78 S.E.2d 382 (1953); State vs. Parker, 81 Ida. 51, 336 P.2d 318 (1959); Thrasher vs. State, 94 Okl.Cir. 105, 231 P.2d 409 (1951); State vs. Pruett, 428 P.2d 43, 91 Ida. 537 (1967); In re France, 147 Mont. 283, 411 P.2d 732 (1966); Appeal of Lewis, 208 Okl. 610, 258 P.2d 173 (1953); May vs. Moore, 249 S.W.2d 518 (Ky. 1952); Haswell vs. Powell, 38 Ill.2d 161, 230 N.E.2d 178 (1967).

is constitutional and by the same reasoning must admit that were there no procedures available to a creditor to alleviate this suspension, it would be constitutional . How can Petitioners, in good faith, complain of less severe restrictions ?

For the reasons submitted, Respondents respectfully pray this Court to uphold the constitutionality of the challenged legislation.

GARY K. NELSON
The Attorney General



ROBERT H. SCHLOSSER
Special Counsel
718 Arizona Title Building
Phoenix, Arizona 85003
Attorneys for Respondents

AFFIDAVIT OF SERVICE

STATE OF ARIZONA)
) ss.
County of Maricopa)

ROBERT H. SCHLOSSER, Counsel for Respondents herein, certifies that three (3) copies of the foregoing Brief, in its entirety, was served upon Counsel for Petitioners in the following manner:

By certified mail, postage prepaid, return receipt requested, to:

ANTHONY B. CHING
Special Counsel
Legal Aid Society of the
Pima County Bar Association
Harvard Law School
Cambridge, Massachusetts 02138
Counsel for Petitioners

on the 6th day of January, 1971.

Robert H. Schlosser
ROBERT H. SCHLOSSER
Counsel for Respondents

SUBSCRIBED AND SWORN to before me this 6th day of January, 1971.

Virginia Meyer
Notary Public

My Commission Expires July 26, 1974